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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/528,793	03/23/2005	Toru Miyano	MTS-3553US	6226
53473	7590	06/08/2009		
RATNERPRESTIA			EXAMINER	
P.O. BOX 980			ADEGEYE, OLUWASEUN	
VALLEY FORGE, PA 19482				
			ART UNIT	PAPER NUMBER
			2621	
			MAIL DATE	DELIVERY MODE
			06/08/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/528,793

Applicant(s)

MIYANO, TORU

Examiner

OLUWASEUN A. ADEGEYE

Art Unit

2621

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03/23/2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 - 11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 - 11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03/23/2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/5508)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 03/02/2009 have been fully considered but they are not persuasive.

In re pages 5 and 6, applicants disclose that the cited Shi reference is the opposite of applicants Fig. 6. Applicants disclose that Shi suggests cutting off power to the optical disk player 150 (Applicant's processing section), whereas applicant's claim 1 suggests cutting off power to the optical disk drive 160.

In response, the examiner respectfully disagrees. Claim 1 recites said disk start control means carries out control so as to apply power to said processing section without applying power to said disk section. The processing section of Shi is the optical disk drive (160) that works with the personal computer whereas the disk section of Shi is the optical disk player. With the optical disk drive (160) being the processing section and the optical disk drive (150) being the disk section, the Shi reference is the same as applicants Fig. 6.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1 – 3 and 5 – 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Ellis (US 2004/0103434 A1).

As to **claim 1**, Ellis discloses a disk apparatus (66)(see [62]) comprising :

a disk section (hard disk) of recording and/or reproducing at least one of video, audio and data (see [62] and [63]),

a processing section (tuner) of processing at least one of said video, audio and data (see [63]),

disk start control means (72) of controlling said disk section and said processing section (see [69] - [71]), and

disk start mode setting means (183, 185) of setting either one of a disk start disabling mode (record no) of disabling the start of said disk section and a disk start enabling mode (record yes) of enabling the start of said disk section (see [71] and [106]), wherein

at the time when power ON operation is carried out (see [69]), in the case (1) when said disk start mode setting means sets said disk start disabling mode (record NO), said disk start control means carries out control so as to start said processing section (tuner) without starting said disk section (hard disk), and in the case (2) when said disk start mode setting means sets said disk start enabling mode (record Yes), said disk start control means carries out control so as to start said disk section (hard disk) and said processing section (tuner) (Paragraph 106 discloses the option to either record or not record. If record Yes is chosen, paragraph 63 discloses the tuner and the hard

disk working simultaneously also see [59] and [60]). On the other hand if Record No is chosen, paragraph 61 discloses the signals going straight from the set-top box to the television.)

As to **claim 2**, Ellis discloses a disk apparatus in accordance with claim 1, wherein said disk start mode setting means is set in said disk start disabling mode in a production shipment stage (see [106]).

As to **claim 3**, Ellis discloses a disk apparatus in accordance with claim 1, wherein said disk section is a hard disk of carrying out recording and/or reproduction on magnetic disk media (see [62]).

As to **claim 5**, Ellis discloses a disk apparatus in accordance with claim 1, wherein said processing section is a tuner of receiving broadcasting (see [55] and [63]).

As to **claim 6**, Ellis discloses a disk apparatus in accordance with claim 3, serving as a recorder (PVR) equipped with a hard disk (see [62]), wherein said processing section is a tuner of receiving broadcasting (see [55] and [62] – [63]).

As to **claim 7**, Ellis discloses a disk apparatus in accordance with claim 3, serving as a DVD recorder equipped with a hard disk (see [62]), wherein said processing section is (1) a tuner of receiving broadcasting (see [55] and [62] – [63]) and (2) an optical disk section (compact disc recorder) of recording and/or reproducing said broadcasting received on an optical disk (see [62]).

As to **claim 8**, Ellis discloses a disk apparatus in accordance with claim 3, serving as a television set (64) equipped with a hard disk (see [61] – [63]), wherein said

processing section is (1) a tuner of receiving broadcasting (see [55] and [62] – [63]) and (2) a display section (64) of displaying said broadcasting received (see [55] and [61]).

As to **claim 9**, this is a method claim corresponding to the apparatus claim 1. Therefore, claim 9 is analyzed and rejected as previously discussed with respect to claim 1.

As to **claim 10**, this claim is similar to claim 9 only in that claim 10 is a computer program claim. Ellis discloses a microcontroller or microprocessor that is used to execute software applications (see [53] and [56]).

As to **claim 11**, grounds for rejecting claim 10 apply to claim 11 in its entirety.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis in view of Lee et al (US 6,466,391 B1).

As to **claim 4**, Ellis discloses a disk apparatus in accordance with claim 3. However Ellis does not disclose wherein the safety zone of said hard disk is present on said magnetic disk media.

Lee discloses wherein the safety zone of said hard disk is present on said magnetic disk media (see column 1, lines 12 – 24, column 1, lines 35 - 48, column 4, lines 2 – 6 and column 7, lines 11 – 18).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the safety zone of the hard disk system present on the disc media as taught by Lee to the apparatus of Ellis to prevent inadvertent damage to the data region of the disc (see column 7, lines 11 – 15).

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **OLUWASEUN A. ADEGEYE** whose telephone number

is (571)270-1711. The examiner can normally be reached on Monday - Friday 7:30 - 5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marsha D. Banks-Harold can be reached on 571-272-7905. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

06/03/2009
/Marsha D. Banks-Harold/
Supervisory Patent Examiner, Art Unit 2621
/O.A/